

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

## AMENDED ORDER

Plaintiff James E. Clayton is an Oklahoma inmate held by the State of Washington through an interstate agreement with the Oklahoma Department of Corrections. He brings this action pursuant to 42 U.S.C. § 1983, alleging a violation of his constitutional rights during a period of incarceration in the Oklahoma State Penitentiary where he was incarcerated from approximately mid-February of 2010 through April 14, 2010.<sup>1</sup> Plaintiff appears *pro se* and his pleadings are liberally construed.

In the June 28, 2012, Report and Recommendation of Magistrate Judge Bana Roberts at doc. no. 54, Magistrate Judge Roberts recommends that defendants' motion for summary judgment, doc. no. 20, be granted for the reason that defendants have affirmatively established that plaintiff failed to properly exhaust his administrative

<sup>1</sup>Plaintiff's affidavit, doc. no. 57-1 at ¶ 4, states that he was held at OSP from February 14, 2010, and not February 16, 2010, through April 14, 2010. At ¶ 8 of the same affidavit, plaintiff refers to his confinement at OSP and on H-Unit between February 16, 2010, and April 14, 2010.

remedies prior to the filing of this action. The moving defendants (referred to as “the defendants” in this order) are Former Governor Brad Henry, Governor Mary Fallin, Justin Jones, Bobby Boone, Dan Reynolds, Warden Randall G. Workman, Linda Morgan, Ron Anderson, and Tracy Jones.<sup>2</sup> The Report and Recommendation also recommends that all other pending motions be denied as moot, including plaintiff’s motion for leave to file an amended complaint at doc. no. 29; and both of the pending motions pertaining to discovery (neither of which implicates exhaustion issues) at doc. nos. 34 and 40.<sup>3</sup> Plaintiff filed objections to the Magistrate’s Report and Recommendations. Defendants filed a response brief.

As required by 28 U.S.C. §636(b)(1), the court has reviewed all objected to matters *de novo*. Having concluded that review, and after careful consideration of plaintiff’s objections, the record, and the relevant authorities, the court finds that it agrees with the Report and Recommendation of the Magistrate Judge that plaintiff failed to exhaust his administrative remedies and that no purpose would be served by stating any further analysis here.

Accordingly, plaintiff’s objections to the Report and Recommendation of Magistrate Judge Roberts are **DENIED**, and the Report and Recommendation is **ACCEPTED, ADOPTED, and AFFIRMED**, with the modification noted at n.3, *supra*., and also with the modification that this action is dismissed without prejudice. Accordingly, defendants’ motion for dismissal or alternatively for summary judgment

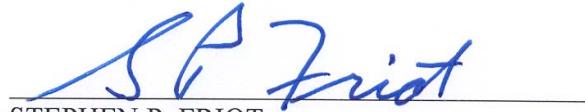
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<sup>2</sup>Other than Doe defendants, the only other defendant named in the complaint is Terry Posvic who was not served and did not enter an appearance.

<sup>3</sup>The Report and Recommendation recommends denying a motion at doc. no. 32 as moot. The reference to doc. no. 32 is an error as there is no such motion. This portion of the Report and Recommendation which recommends denying doc. no. 32 is not adopted.

is **GRANTED** and this action is dismissed without prejudice. Doc. no. 20. All other pending motions are **DENIED** as moot. Doc. nos. 29, 34, 40.

Dated this 4<sup>th</sup> day of October, 2012.



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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE

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